



MINUTES

**City of Scottsdale
Judicial Appointments Advisory Board
Regular Meeting
6:00 p.m., Thursday, April 21, 2011
Human Resources Pinnacle Training Room
7575 E. Main Street**

- PRESENT:** Paul Rybarsyk, Chair
Donald Alvarez, Vice Chair
Dr. Ira Ehrlich
Judge Jean Hoag
Judge John Rea
Francis Scanlon
Kenneth Weingarten
- STAFF:** Valerie Wegner
Judy Dewey
Sherry Scott, Deputy City Attorney
Terry Welker, Interim Executive Director of HR
- OTHERS:** Janet Cornell, Court Administrator
Judge Jim Blake
Judge Orest Jejna
Judge Monte Morgan

CALL TO ORDER

The meeting was called to order at 6:03 p.m.

ROLL CALL

A formal roll call confirmed the presence of all seven board members as noted above.

1. APPROVAL OF MINUTES OF PUBLIC MEETING CONDUCTED ON MARCH 24, 2011

Chair Rybarsyk questioned the accuracy of a statement attributed to Judge Morgan on page 3, saying that the Court's adjudication rates remain above 100%. Judge Morgan avowed that he did make that claim, explaining that in order to deal with the backlog of cases the Court has had for the past 20 years, they try to adjudicate 180 cases for every 100 that come in.

Chair Rybarsyk suggested an amendment on page 5, indicating that Board Member Scanlon seconded the motion to have Vice Chair Alvarez represent the Board to discuss Judge Jejna's reappointment with City Council members.

JUDGE HOAG MOVED TO APPROVE THE MINUTES OF THE MARCH 24, 2011 PUBLIC MEETING AS AMENDED. BOARD MEMBER SCANLON SECONDED. THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

2. PUBLIC COMMENT REGARDING REAPPOINTMENT OF JUDGE BLAKE

Chair Rybarsyk invited public comments on Judge Blake's reappointment.

Ms. Janet Cornell, Court Administrator, supported Judge Blake's reappointment. In his almost 10 years of service, he has worked more than 2,500 days. He takes his job very seriously, and is very adept at looking at the rules that guide how the Court performs. He interacts with fellow judges, hearing officers and staff on general Court policies, and keeps good control of his court. Judge Blake covers the calendars of fellow judges as necessary.

Vice Chair Alvarez inquired whether Ms. Cornell has heard any negative comments about Judge Blake. Ms. Cornell responded that she received two emails, one from a lawyer, and one from a family member of a litigant, that complained about him. Vice Chair Alvarez said similar comments have been made elsewhere that were not nearly as critical as those contained in the emails. Ms. Cornell noted that some 10.2 notices were filed in 2010 regarding Judge Blake. She stated that he takes his court seriously and strives to keep order in the courtroom. Sometimes when judges do this, lay people perceive them as being brusque. With regard to the letter from the attorney, she said attorneys prefer their own litigation tactics and do not like to lose. She referred to the letter from the family member of a litigant, noting that family members, in most cases, have no standing to speak in the courtroom.

Vice Chair Alvarez said it might simply be the case that Judge Blake is just a tough judge, and this is not a problem as long as he does a good job. He suggested that Judge Blake might improve perceptions of his work by tempering his severity a little. He shared that in his own experience in the Scottsdale Court, Judge Blake ran a good courtroom. Ms. Cornell stated that occasionally litigants are stressed when they come into court. Lawyers want to use certain tactics. It would be a stretch to accuse Judge Blake as having an inappropriate judicial temperament. She explained that Judge Blake had 58 notices of change of judge from only 25 different attorneys over a period in which he handled as many as 20,000 different cases. The volume is not exorbitant.

Board Member Scanlon inquired about the rate of appeals. Ms. Cornell responded that Judge Blake had 17 cases that were appealed in 2010. Of those, six were affirmed, and 11 were either reversed, did not go forward, or are still pending. The six affirmations confirmed his ruling.

Judge Jejna said he has known Jim Blake for 20 years. He was a tough, diligent and practical prosecutor, and has been with the Scottsdale Court for the last ten years. He works extremely hard, and takes his job very seriously. He understands and interprets the law extremely well. Judge Jejna expressed his support for the reappointment of Judge Blake. Inside Judge Blake's courtroom, it is all about the law and the litigants, and he maintains proper order there. Sometimes litigants do not like that.

Professionally, Judge Blake is a valuable colleague, and is always available if the Court needs his assistance.

Board Member Ehrlich said his research has led him to conclude that Judge Blake is an excellent judge who conducts himself in court a little differently than other judges. Occasionally he offends people. Board Member Ehrlich questioned whether someone should discuss this issue with the judge in private. Judge Jejna responded that Judge Blake would be receptive to constructive comments if the issue was crucial.

Judge Morgan urged the Board's unanimous recommendation to reappoint Judge Blake. He rebutted the email claims that Judge Blake is not knowledgeable about the law, stating that the claims are not based on real situations. Sometimes it is very difficult to maintain decorum in the court, and judges have to occasionally deal with very poor conduct. He cautioned against allowing two letters to distract the Board from realizing that Judge Blake is a quality judge with tremendous experience.

3. DISCUSSION OF JUDICIAL SURVEY RESULTS ON ASSOCIATE CITY JUDGE JAMES BLAKE

Judge Hoag noted that Judge Blake has not had demeanor hits in the previous six years she has been on the Board. The Court is down one judge, and that extra workload becomes a factor after a while. Judge Morgan stated that all four judges are constantly jumping around trying to keep up with the workload. It gets tiresome and frustrating after a while. The environment is hostile. Lawyers are doing everything they can to find loopholes and win their cases. The litigants that come through the Court are treated fairly, and receive real justice. It has always been a user-friendly court, and Judge Blake has been a part of that.

Vice Chair Alvarez noted that the attorneys he spoke to regard Scottsdale as one of the top city courts, despite all the problems it faces. The legal issue that Mr. Zimmerman discusses in his public comment had to do with the filing of a motion in limine, which did not seem to be caused by a lack of legal knowledge on Judge Blake's part, but was possibly a timing issue. Judge Morgan reminded the Board that the case in question occurred in 2002, while Judge Blake has gone through reappointment three times since then. He said he can always count on Judge Blake's help and knowledge.

The Board discussed ways to possibly address the recurring theme that Judge Blake can sometimes be irascible, rude and unkind. Board Member Ehrlich suggested that someone simply sit down to remind him that he could work on adjusting this behavior. Judge Hoag cautioned that such a task would be beyond the Board's mission. Judge Rea said different judges run courtrooms in different ways. The complaints imply that Judge Blake runs a very strict courtroom, but he sees nothing in them that suggests his conduct is abusive.

Judge Rea pointed out that while Judge Blake's judicial temperament scores are pretty low; his legal ability scores are extremely good. Out of 144 surveys, 100% of respondents marked his legal analysis as satisfactory or better. Even the lawyers that are offended by the way he runs his courtroom have a high opinion of his legal abilities. Vice Chairman Alvarez noted that since most of the respondents are defense attorneys, the survey results indicate that he is tough on the defense. He makes them stick to the rules.

Board Member Ehrlich said all the judges are carrying an extra load, and are under stress. They either have to accept this or get out of the job. Clearly Judge Blake is a very capable judge, but his temperament issues were a persistent complaint.

4. DISCUSSION OF CONFIDENTIAL RECORDS RELATED TO JUDGE BLAKE'S PERFORMANCE AND POSSIBLE REAPPOINTMENT DURING AN EXECUTIVE SESSION

BOARD MEMBER SCANLON MOVED TO ENTER INTO EXECUTIVE SESSION TO DISCUSS CONFIDENTIAL RECORDS RELATED TO JUDGE BLAKE'S PERFORMANCE. BOARD MEMBER EHRLICH SECONDED. THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

The Board entered into executive session at 6:53 p.m. and reconvened into the public meeting at 7:22 p.m.

5. DISCUSSION QUESTIONS FOR INTERVIEW OF JUDGE BLAKE

Chair Rybarsyk cautioned the Board about drawing assumptions about the cause of Judge Blake's demeanor in the courtroom. Judge Hoag said Judge Blake is hard-working, ethical, and has great integrity. His demeanor needs to be addressed, however. There is a reason for it, and the Board needs to know what the reason is.

Chair Rybarsyk asked Board Members whether Judge Blake's demeanor issues were significant enough to threaten his retention. Judge Rea said his demeanor is a real concern but does not disqualify him at this time. These issues should not persist to the next reappointment, however. He would expect Judge Blake to address the comments seriously. Chair Rybarsyk said that other than his demeanor, Judge Blake is a huge asset to the Court, considering his workload, timeliness, and knowledge of the law.

6. INTERVIEW OF JUDGE BLAKE

Vice Chairman Alvarez noted that a number of interviewees raised concerns about Judge Blake's demeanor in the courtroom, and requested that he comment on them. Judge Blake responded that one of the public comments was from Allen Zimmerman, who has had three cases with him. Two of those cases were noticed. The other case was from 2002. That case went against Mr. Zimmerman, who lost two appeals. He said Mr. Zimmerman had opportunities to complain about him in 2003, 2005, and 2007 when he was up for reappointment.

Vice Chairman Alvarez said he spoke with Mr. Zimmerman who complained that a ruling on a motion in limine was filed in the middle of trial. That was the issue that went up on appeal. Judge Blake responded that Mr. Zimmerman wanted him to declare the statute unconstitutional. He explained that he did not think it was his place to do so, nor did he agree that the statute was unconstitutional.

Vice Chairman Alvarez stated that the issue of judicial temperament came up in many Board interviews. The main theme is that Judge Blake can be short, curt, and rude. None of these complaints were made the last time he came up for reappointment. He requested commentary on these allegations. Judge Blake responded that he does not feel he is rude. Many times people see rudeness when they do not get what they want. He admits to being short and curt, but has had to deal with as many as three courts at once. A judge has to be fast in order to keep up with such a workload.

Judge Blake explained that unlike other judges, he will sometimes do multiple arraignments at once if the charges and sentences are the same. Some people appreciate this, since they can get out of court faster; but not everyone does. He is willing to deal with arraignments individually if they prefer.

Judge Hoag said litigants are often scared to be in a courtroom. They do not understand the system. She inquired what Judge Blake would do to make his courtroom a little friendlier. Judge Blake responded that when people get emotional, he offers them the opportunity to sit back down to collect themselves. Once they are able to continue, he calls them back up again. Now that the caseload is more evenly balanced, he no longer has to rush through them as quickly, and this has made a big difference. Judge Hoag inquired about his handling of jurors. Judge Blake responded that he has not had issues with jurors in the courtroom.

Chair Rybarsyk asked whether Judge Blake ever felt his caseload was too overwhelming. Judge Blake responded affirmatively, especially when several trials move forward at once. He said he likes to spend time on questions. The outcome of one recent case could have resulted in a conviction had he not taken the extra time to ascertain the defendant's testimony.

Judge Rea noted that the same lawyers who give such high marks in his legal abilities, rate Judge Blake significantly lower in temperament. Judge Blake explained that as he becomes familiar with people, he tends to be more frank with them, and sometimes they do not like that. He stated that he has learned to refrain from making frank comments off the record, since it has led to him getting noticed in the past. It is different when there is a factual determination, because he has to hear the witnesses and must decide who to believe. But when everyone agrees with the facts, and the law is against them, and they are not disputing the law, the purpose of the proceedings must be called into question. To do otherwise would be a waste of everyone's time. He now lets attorneys proceed with the hearing, and then explains to them what the law says.

Chair Rybarsyk inquired about Judge Blake's reaction when he saw the difference between his legal abilities scores, and his temperament scores. Judge Blake said he did not like seeing them, but people disagree about what compassion means. He feels that imposing consequences on people who fail multiple times is a compassionate act because it can get them to turn their lives around while the crime is still a misdemeanor, and before they commit a felony. They have an opportunity to change their behavior before it is too late. If he sees someone making an effort to change, he will be more lenient, but there have to be consequences for those who do not even try. Where complicating issues exist, he goes out of his way to help resolve them.

7. DISCUSSION AND REAPPOINTMENT RECOMMENDATIONS REGARDING JUDGE BLAKE

Board Member Ehrlich said he would recommend reappointment, but felt that Judge Blake does not understand the complaints against him. In two years, JAAB could be hearing the same complaints again, but at that point he would not vote to reappoint him. Vice Chair Alvarez said Judge Blake is a tough judge who is under a lot of pressure. He may not have the greatest demeanor, but he is getting things done. Everything else about him gets outstanding reviews. Most of the low demeanor marks are from defense attorneys. Judge Blake is a tough judge on the defense. That is not to say he is unfair.

His approach is based on his prosecutorial background. He recommends Judge Blake's reappointment.

Board Member Scanlon felt that the comments against Judge Blake were based not on what he says, but how he says it. The overloaded court is a serious problem. Board Member Ehrlich said he would have liked to have heard Judge Blake admit that his demeanor was due to his heavy caseload, and make a commitment to improve his scores moving forward. Instead Judge Blake felt that the scores were unfair. Vice Chair Alvarez felt that Judge Blake approaches his job like a football coach would. He will find a way to get the job done, even if it offends people, but that does not mean he is doing anything wrong. Judge Rea noted that the demeanor scores are not low across all categories. They are fairly reasonable with jurors, parties, and staff, but low with lawyers. Judge Hoag said judges sometimes have to be careful not to personalize their comments. There is no place for that in court.

Chair Rybarsyk commented that it would be very difficult to find a replacement for Judge Blake with the same experience, qualifications, and ability to handle the extra workload that he has. The other judges go to him when they have questions. Judges should be personable, especially in misdemeanor courts. The parties there are not criminals, and they should be treated courteously.

BOARD MEMBER EHRLICH MOVED TO RECOMMEND JUDICIAL REAPPOINTMENT OF JUDGE BLAKE. JUDGE HOAG SECONDED. THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

Vice Chair Alvarez volunteered to attend the City Council meeting to present the Board's recommendation.

8. DISCUSSION OF AND POSSIBLE RECOMMENDATION TO CITY COUNCIL TO AMEND THE ORDINANCE REGARDING TERM LENGTHS FOR ASSOCIATE CITY JUDGES

Chair Rybarsyk inquired whether any Board Members objected to extending the length of judicial terms. Mr. Welker suggested it would be in the best interest of the City to focus on the reappointment process at this time. While he understands the merits of the argument, the quick succession of decisions required by the Board this year may confuse the issues. Each issue should be weighed on its own merit. The issue of term lengths has been controversial recently, and it would be better to address it once the reappointment processes have concluded.

Ms. Scott noted that the Charter Review Task Force recommended that terms be a minimum of two years, but they did not address the Council's ability to pass an ordinance that might extend those terms. The Task Force felt that the matter would be more appropriately addressed in an ordinance. Board Member Ehrlich noted that once the reappointment processes conclude, JAAB will have plenty of time to consider this matter.

BOARD MEMBER EHRLICH MOVED TO TABLE AGENDA ITEM 8 REGARDING TERM LENGTHS FOR ASSOCIATE CITY JUDGES. JUDGE REA SECONDED. THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

9. FUTURE AGENDA ITEMS

Board Member Ehrlich requested a future agenda item to discuss a recommendation to City Council extending judicial term lengths.

Vice Chair Alvarez reported that the Mayor wants JAAB to be very careful about executive sessions and the issues discussed while in them. He said the Board should err on the side of public disclosure. Many of the comments about judges are made to the Board in confidence, but the Mayor suggested that the Board discuss them without mentioning the names of the interviewees. Vice Chair Alvarez proposed an agenda item to discuss the Mayor's suggestion.

ADJOURNMENT

With no further business to discuss, being duly moved and seconded, the meeting of the Judicial Appointments Advisory Board adjourned at 8:29 p.m.

Respectfully submitted,
Valerie Wegner
HR Office Coordination Manager

Reviewed by,
Paul Rybarsyk
JAAB Chairperson